77-1236

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. [redacted]

GENERAL ATOMIC COMPANY,
Petitioner,

v.

THE HONORABLE EDWIN L. FELTER, JUDGE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW MEXICO

The petitioner, General Atomic Company, respectfully prays that a writ of certiorari issue to review the order of the Supreme Court of New Mexico entered in this proceeding on January 11, 1978.

OPINIONS BELOW

The Supreme Court of New Mexico issued no opinion in denying petitioner's application for a writ of prohibition. Its order denying the writ appears as Appendix A hereto (p. 1a, *infra*). The trial judge, The Honorable Edwin L. Felter, whose order of November 18, 1977 was the subject of the request for a writ of prohibition, also issued no opinion. His challenged order appears as Appendix B (pp. 2a-5a, *infra*).

JURISDICTION

The order of the Supreme Court of New Mexico denying the petition for a writ of prohibition was issued on January 11, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). *See, e.g., Madruga* v. *Superior Court*, 346 U.S. 556 (1954); *Fisher* v. *District Court*, 424 U.S. 382 (1976).

QUESTIONS PRESENTED

1. Whether a State trial judge has jurisdiction to issue a discovery order requiring documents located in Canada to be produced in his court though such production violates Canadian criminal law and the judge's order is in direct conflict with formal Diplomatic Notes sent by the Government of Canada, or whether such judicial action interferes unconstitutionally with foreign affairs, which are reserved exclusively to the federal government.

2. Whether respondent is violating the "act of state" doctrine by overriding a criminal law enacted and enforced on Canadian soil by the Canadian Government and by adjudicating the legality of an international marketing arrangement sponsored, adopted and enforced on Canadian territory by the Government of Canada.

3. Whether respondent is violating the Due Process Clause by penalizing petitioner for the refusal of a nonparty Canadian corporation to violate the criminal law of Canada.

STATEMENT OF THE CASE

This petition concerns a "Canadian documents" order issued by respondent, the Honorable Edwin L. Felter, a New Mexico trial judge who is presiding over a major civil case now pending in the First Judicial District, Santa Fe County, New Mexico. The civil case, entitled *United Nuclear Corp.* v. *General Atomic Co.* (*"UNC* v. *GAC"*), No. 50827, involves more than seven hundred million dollars. The litigation has been described in detail in papers previously filed with this Court by GAC,[1] as well as in a Petition for Writ of Mandamus which is being filed today as a companion to this Petition for Writ of Certiorari.

This Court recently considered the validity of an earlier order which respondent had issued in this substantial litigation. The earlier order, issued on April 2, 1976, had enjoined GAC and its constituent partners from pursuing federal remedies, including the remedy of federal arbitration. On October 31, 1977, this Court determined that the earlier injunctive order was unconstitutional, and summarily reversed the judgment of the New Mexico Supreme Court affirming that order.[2] *General Atomic Co.* v. *Felter*, 98 S. Ct. 76 (1977). The accompanying Motion and supporting Petition for Writ of Mandamus relate to a new order by which respondent has partially reinstituted his prior illegal ban on seeking federal remedies and has thus unconstitutionally flouted this Court's decision. This Petition for Writ of Certiorari challenges a different unconstitutional order issued by respondent. The latter order, purportedly only a discovery order accompanied by a drastic sanction, exceeds respondent's constitutional jurisdiction. The order requires GAC to produce documents located in Canada even though (1) such documents are in the possession or custody of a Canadian corporation, Gulf Minerals Canada, Ltd ("GMCL"), (2) disclosure of the documents by GMCL would be a serious crime under Canadian law,

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[1] Petition for Writ of Certiorari, *General Atomic Co.* v. *Felter*, No. 76-385, 429 U.S. 973 (1976); Petition for Writ of Certiorari, *General Atomic Co.* v. *Felter*, No. 76-1640, 98 S. Ct. 76 (1977).

[2] The New Mexico Supreme Court had initially affirmed the order without opinion. This Court then granted a writ of certiorari, vacated the judgment below, and remanded to the New Mexico Supreme Court for a statement of whether the State court's affirmance rested on federal or state grounds. *General Atomic Co.* v. *Felter*, 429 U.S. 973 (1976). Only after the remand did the New Mexico Supreme Court write an opinion stating its grounds for affirmance. 90 N.M. 120 (1977). This Court then granted certiorari again and summarily reversed the New Mexico Supreme Court.

and (3) the Canadian Government has delivered formal diplomatic protests against the order.

1. The Framework of the Discovery Order

The litigation in the New Mexico court was instituted by UNC in late 1975 to rescind and invalidate a 1973 agreement which obligated UNC to supply uranium to GAC.[3] Various grounds were initially asserted by UNC in support of its claim of invalidity, but not until a few months before trial did UNC seriously contend that supposed participation in an alleged "international uranium cartel" was a part of the case. In August 1977, however, UNC made such an assertion, claiming that the participants in the alleged "international cartel" included, among others, GAC, Gulf Oil Corporation ("Gulf"), which owns one-half of GAC,[4] and Gulf Minerals Canada, Ltd. ("GMCL"), a Gulf subsidiary which is located and incorporated in Canada.

The alleged "international cartel" was in fact an international uranium marketing arrangement established and enforced by foreign governments, including the Government of Canada.[5] Between 1972 and 1975 the foreign

[3] Between 1966 and 1971, UNC entered agreements to supply uranium to various utility companies, including Duke Power, Commonwealth Edison, Detroit Edison, and Indiana and Michigan Electric Co. UNC's obligations to supply uranium under the agreements were subsequently assigned to GAC's predecessors, and ultimately to GAC. Concomitant with the first two assignments, UNC became obligated to supply the assignees with uranium which the assignees would then resupply to the utilities. Thus, the 1973 supply agreement discussed in the text is a contract under which UNC reaffirmed its obligation to supply uranium to an assignee which would resupply it to the utilities.

An amended complaint sought to rescind a 1974 agreement on primarily the same grounds as were asserted in regard to the 1973 contract.

[4] Scallop Nuclear, Inc. is the other constituent partner in GAC. There is no claim that Scallop was part of the alleged "international cartel" or possessed documents or information relating to the alleged "international cartel."

[5] Other participants included Australia, France and South Africa.

governments, together with foreign uranium producers, established price controls and marketing quotas for uranium sold elsewhere than in the United States. The foreign governments considered these steps to be necessary to protect their uranium industries against severe damage being caused by restrictive American trade practices. Paramount among such restrictive practices was an American embargo, instituted in 1966, against importing and enriching foreign uranium for use in the United States. The Government of Canada has stated, in several official diplomatic notes to the United States Government, App. C, pp. 6a-12a, *infra*, and in official statements of Canadian ministers, App. D, pp. 13a-25a, *infra*, that the international marketing arrangement was necessary to protect the Canadian uranium industry from severe harm or extinction.[6] It likewise has stated that American actions causing the harm were a violation of U.S. obligations under an international agreement, that the Government of Canada approved of the international marketing arrangement and was one of the leading governments involved in its organization, that the Canadian Government enforced the arrangement through the granting or withholding of export permits, and that the Government of Canada is offended by efforts to question the arrangement in American courts. (App. C, pp. 6a-12a and App. D, pp. 13a-25a, *infra*).

After UNC began seriously to contend that this international marketing arrangement violated the New Mexico Antitrust Act, N.M.S.A. §§ 49-1-1, *et seq.*, in August 1977 it sought to discover Canadian documents related to the international arrangement and located in the Canadian offices of GMCL. In opposing UNC's discovery request, GAC directed Judge Felter's attention to the Canadian Uranium Information Security Regulations,

[6] The Canadian uranium industry originally had been greatly expanded, at the express encouragement of the American government, to meet the needs of the United States market.

S.O.R. 76-644 (P.C. 1976-2368), which had been promulgated pursuant to Section 9 of Canada's Atomic Energy Control Act, R.S.C. 1970, c. A-19. (App. E, pp. 26a-27a, *infra.*) These regulations broadly prohibit the release or disclosure of any document relating to discussions or meetings, between 1972 and 1975, pertaining to the "production, import, export, transportation, refining, possession, ownership, use or sale of uranium or its derivatives or compounds" (App. E, pp. 26a-27a, *infra*). GAC pointed out that GMCL would violate Canadian law and subject itself to criminal prosecution if GMCL disclosed the documents pursuant to UNC's discovery request.

2. The Duquesne and Westinghouse Litigations

The question of producing Canadian documents relating to the international arrangement had previously arisen in two other cases. In *Duquesne Light Co., et al.* v. *Westinghouse Electric Corp.*, No. GD 75-23978 In Equity, Court of Common Pleas, Allegheny County, Pennsylvania, Civil Division, letters rogatory for the documents had been issued, but the Supreme Court of Ontario refused to enforce the letters. In a decision of June 29, 1977, that court had held that disclosure would be "harmful to the public interest" of Canada and that

> [I]t is inappropriate . . . to invoke the doctrine of comity of nations in an effort to search out testimony and documents designed to permit a foreign tribunal to determine whether actions taken by or on behalf of the Government of Canada were contrary or inconsistent with the laws of a foreign country . . . . Similarly, in this very special factual situation, letters rogatory should not . . . be enforced against officers of Canadian corporations whose actions during the pertinent period had received the stamp of approval of the Canadian Government.

In re Evidence Act, R.S.O. 1970, c. 151 (and *In re: Westinghouse Electric Corp. Uranium Contracts Litigation*), —— Ont. 2d —— (1977).

In the case of *In re Westinghouse Electric Corp. Uranium Contracts Litigation*, 563 F.2d 992 (10th Cir. 1977), Rio Algom Corp. was unable to produce the desired Canadian documents in response to a discovery request. The federal judge, the Hon. Willis W. Ritter, thereupon issued an order finding Rio Algom in contempt of court, and imposing a fine, notwithstanding the argument that disclosure of the documents was prohibited by Canadian law. On October 11, 1977, the Court of Appeals for the Tenth Circuit reversed, finding that a good faith effort had been made to secure the documents and that the refusal to violate Canadian law could not be penalized in this manner. The court of appeals noted on several occasions that Canada's sovereign interests were heavily involved in this matter. 563 F.2d at 995, 998, 999.

3. Judge Felter's First Canadian Documents Order and GAC's Waiver Request

On the same day that the Tenth Circuit decided the Westinghouse case, October 11, 1977, Judge Felter issued a discovery order directing GAC to identify and produce the GMCL documents "reposing in Canada" and to try to secure a waiver of any Canadian prohibition against identifying, summarizing, copying or producing the documents (App. F, pp. 28a-33a, *infra*).

GAC thereupon tried in good faith to secure a waiver with respect to the documents in GMCL's possession. In a letter of October 13, 1977, it requested a waiver from the Honorable Alastair Gillespie, Minister of the Canadian Department of Energy, Mines and Resources (App. G, pp. 34a-36a, *infra*). The Minister refused the waiver in a letter of October 19, 1977, stating that compliance by GMCL would be a violation of the Regulations, that production of the documents would be "contrary to the interests of Canada" and that mere identification of the documents "would contravene the Uranium Information Security Regulations of Canada" (App. H, pp. 37a-

38a, *infra*). The request for a waiver and the Canadian Government's official reply were transmitted to Judge Felter.

4. Judge Felter's Second Canadian Documents Order

On November 18, 1977, Judge Felter entered an order which declared preliminarily (App. B, pp. 3a-4a, *infra*):

> Deference to the sovereignty and national interest of Canada or its provinces cannot be accomplished through sacrifice of the sovereignty of New Mexico and of due process of law and equal application and protection of law afforded by the laws of New Mexico. In this forum, the aforesaid laws of this forum which protect the fundamental public policy of this state must govern over the national interest or policy of a foreign country as legislated and conceived by that foreign country. No rule of comity would require a sovereign state of the United States to so abdicate the protection of fundamental rights under its general laws that are necessary to a fair trial in favor of special foreign laws that are not concerned with any aspect or requirement of fair trial.

The order then directed GAC to identify and produce documents located in Canada and declared that

> all facts provable from documents housed in Canada which are not produced and which are the subject of said motion are found against defendant, General Atomic Company, and said defendant is precluded from offering evidence herein in opposition to such findings of fact . . . .

This order—which elevates the "public policy" of New Mexico over "the national interest or policy of a foreign country"—thus required production of Canadian documents upon pain of irrebuttable findings which could effectively dispose of the case.

5. GAC's Second Waiver Request

Ten days before the entry of the November 18 order, GAC submitted a second request for a waiver to Minister

Gillespie. In this request, GAC asked for permission for GMCL to provide GAC with only an identification of the Canadian documents (App. I, pp. 39a-40a, *infra*). The Minister denied GAC's request by letter dated December 6, 1977 (App. J, p. 41a, *infra*). The Minister's letter also referred to a recent judicial opinion, written by the Chief Justice of the Ontario Supreme Court, ruling that there was no statutory or regulatory authority to waive the prohibition against disclosure of the documents. On December 9, 1977, Minister Gillespie also wrote a letter to GMCL, warning it that Canadian law would be violated by any disclosure of documents to GAC or by any assistance it might give GAC in identifying or producing the documents (App. K, pp. 42a-43a, *infra*).

6. GAC's Motion to Vacate, and the Canadian Government's Diplomatic Notes

Subsequent to these formal notifications from the Government of Canada, GAC requested Judge Felter to vacate his order of November 18. While GAC's motion to vacate was pending, the United States Department of State delivered to Judge Felter two formal Diplomatic Notes transmitted by the Government of Canada. The covering letter and the text of the Notes appear in Appendix C, pp. 8a-12a, *infra*. The earlier of the two Notes, dated August 15, 1977, stated the basis for Canada's participation in the uranium marketing arrangement, and said that (App. C, p. 9a, *infra*):

> The Canadian Government finds it objectionable that this Canadian Government policy should be questioned under United States law.

The second Note, dated December 9, 1977, explicitly made reference to Judge Felter's order directing GAC to identify and produce documents in the possession of GMCL. The Note called attention to the Canadian pro-

hibition against disclosure and to the recent Canadian judicial decision holding that there was no authority to waive the prohibition. The Note concluded (App. C, pp. 11a-12a, *infra*):

> The Canadian Government is deeply concerned that an order has been issued by the United States Court, the effect of which would be to compel the identification and production of documents in Canada contrary to Canadian law, a result that would be inconsistent with international comity. The Canadian Embassy requests the Department of State to bring the Canadian Government's position, including the views expressed in the Secretary of State of External Affairs Note No. FLP-177 of August 15, to the attention of the United States Court in New Mexico.

7. Denial of the Motion to Vacate

On December 20, 1977, the Diplomatic Notes were sent to Judge Felter by the State Department. On December 27, Judge Felter denied GAC's motion to vacate his order of November 18 (App. L, pp. 44a-46a, *infra*). Despite the Canadian Government's repeated statements that identification of the Canadian documents would violate Canadian law, Judge Felter said that it had not been shown to his "satisfaction" that identification would violate Canadian law, and that, even if identification would violate Canadian law, the order of November 18 must still stand.

8. GAC's Petition for a Writ of Prohibition

On January 5, 1978, GAC filed a petition for an original writ of prohibition in the New Mexico Supreme Court. The petition alleged that Judge Felter had exceeded his jurisdiction by asserting authority to rule on claims concerning the legality of an international arrangement sponsored and enforced by the Canadian Government and by ordering the identification and production of GMCL's Canadian documents in violation of Canadian law and over the official protests of the Government of Canada. The petition requested the New Mexico Supreme Court to restrain Judge Felter from these actions exceeding his jurisdiction. The New Mexico Supreme Court denied the requested writ of prohibition by order dated January 11, 1978 (App. A, p. 1a, *infra*).

Thereafter, GAC filed a motion for a stay of the trial pending the filing and disposition of a petition for a writ of certiorari to be filed with this Court. On February 1, 1978, the New Mexico Supreme Court denied that motion, but provided in its order that Judge Felter should "allow the parties sufficient time prior to the entry of any order of findings of facts based upon the order of November 16, 1977 [*sic*] to present to this Court additional motions as may be appropriate" (App. M, pp. 47a-48a, *infra*).

REASONS FOR GRANTING THE WRIT

1. The Canadian Documents Order Intrudes Upon Foreign Relations, Which Are Within the Exclusive Authority of the Federal Government

This Court held in *Zschernig* v. *Miller*, 389 U.S. 429, 440-441 (1968), that a State statute which might "impair the effective exercise of the nation's foreign policy" or which "may disturb foreign relations" constitutes an unconstitutional intrusion into the exclusive authority of the federal government over the field of foreign affairs—a field which "the Constitution entrusts to the President and the Congress." 389 U.S. at 432. The same considerations apply to the judicial order which is at issue here.

In this case a State court is requiring GAC to obtain identification and production of foreign documents of GMCL, a non-party Canadian corporation, though for

GMCL to do these acts would violate a foreign criminal law. A sovereign foreign government, which is closely allied to the United States, has formally advised the State judge that its criminal law would be broken, and its national policy interfered with, if private parties were to carry out his discovery order. It has also formally expressed its concern over the very entry of an order which, if implemented, would have these consequences. The foreign government has additionally protested and refused to allow compliance with similar discovery orders in prior cases, including the *Duquesne* and *Westinghouse* litigations discussed above, and has explicitly warned GMCL against cooperating with the New Mexico court's discovery order.[7] In this set of circumstances, the State court must excuse a private party's inability to comply with its discovery order—an inability which clearly is beyond the private party's control, and which is a direct consequence of the enforcement of foreign law on foreign territory in a matter of grave importance to a foreign government.

Any other action by the State court invariably "launch[es] the state upon a prohibited voyage into a domain of exclusively federal competence," 389 U.S. at 442 (Stewart and Brennan, JJ., concurring). For it is plain that Judge Felter has issued and is enforcing his discovery order because he is unwilling to accept, and has determined to override, the sovereign national and international policies of a foreign nation. This is clearly true with respect to Canada's policy against disclosure of documents, as well as with its underlying policy of enforcing a marketing arrangement. Indeed, Judge Felter has been explicit in his unwillingness to accept Canada's policy regarding disclosure of documents and in his in-

[7] The actions of the Canadian Government show that this case has nothing in common with cases in which private litigants assert dubious claims that compliance with a court order would cause a violation of foreign law. See, *e.g.*, *Arthur Andersen & Co.* v. *Finesilver*, No. 77-1591, decided February 9, 1978, Tenth Circuit Court of Appeals.

tent to override its policy: His "discovery order" of November 18 recited that the fundamental public policy of New Mexico "must govern over the national interest or policy of a foreign country as legislated and conceived by that foreign country."

Judge Felter's judicial act of ignoring and overriding the criminal law and national policies of an internationally sovereign government—which happens to be one of our closest allies—cannot stand under the decisions of this Court. *Zschernig* v. *Miller*, and the line of cases that preceded it—including *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936); *United States* v. *Belmont*, 301 U.S. 324 (1937); and *United States* v. *Pink*, 315 U.S. 203 (1942)—have established the rule that "complete power over foreign affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the states." *Belmont*, 301 U.S. at 331. In this connection, this Court observed in *Pink* that the States must abstain in matters affecting foreign relations—"an exclusive federal function"—lest there be "serious consequences" for "[t]he nation as a whole." 315 U.S. at 232. This position was reaffirmed in *Zschernig*. 389 U.S. at 432, 436, 440 and 441.

By determining not to accept Canada's criminal law and policy despite the formal representations of the Canadian Government, Judge Felter is failing to honor this Court's teaching that States must abstain in matters connected with foreign relations. Judge Felter failed even to seek guidance from the Executive Branch on the implications of any decision he might reach,[8] and ap-

[8] The State Department's boilerplate statement in its cover letter of December 20 that "[t]ransmittal of these documents should not be understood as having implications with respect to the foreign affairs of the United States" (App. C, p. 8a, *infra*) was not, of course, an evaluation of the impact of Judge Felter's ruling on foreign relations. A formal inquiry to the Department of State—which would have been the natural reaction of a federal court—was not even made.

parently accorded no weight whatever to the representations of the Canadian Government.[9] Instead, he deliberately took highly controversial action having a "great potential for disruption or embarrassment" in the delicate field of foreign affairs. *Zschernig* v. *Miller*, 398 U.S. at 435. Such action is forbidden to a State trial judge, who must withdraw or abstain from interfering with foreign affairs, no less than a State legislature.

2. Judge Felter Is Violating the Act of State Doctrine

As noted above, Judge Felter has overriden the objections of the Government of Canada and totally discounted a criminal law enacted and enforced on Canadian territory by the Canadian Government. It seems equally clear that Judge Felter's order requiring the production of Canadian documents is merely the first step in a comprehensive adjudication of the legality of the international marketing arrangement sponsored and enforced on Canadian territory by the Canadian Government. If such an adjudication were not his intention, Judge Felter would not be compelling the production of GMCL's Canadian documents relating to the arrangement.

As is true of the discovery order itself, the intended adjudication by Judge Felter has been challenged by the Canadian Government. It has formally objected to the fact that Judge Felter is questioning the international

[9] When this Petition was prepared, Judge Felter had not yet elaborated the precise findings of fact by which he is sanctioning GAC for failing to cause GMCL to violate the criminal law of Canada. See n. 11, *infra*. (Briefs addressed to the precise findings were before him.) The unconstitutionality of his intrusion into foreign affairs, however, does not turn upon his elaboration and formal entry of the findings. Rather, illegality inheres in his very act of issuing a discovery order which overrides Canadian law and policy, and does so over the formally transmitted objections of the Canadian Government. The issuance of such an order, which exceeded Judge Felter's constitutional jurisdiction, required the New Mexico Supreme Court to issue a writ of prohibition.

marketing arrangement which Canada sponsored and enforced in its own country. The Canadian Government's objection was spelled out in the Diplomatic Note of August 15, 1977, which stated Canada's reasons for adopting the marketing arrangement and which was transmitted to Judge Felter by the State Department at the request of the Canadian Government (App. C, pp. 8a-12a, *infra*).

Overriding a criminal law applicable on Canadian soil and questioning the legality of an arrangement enforced on Canadian territory (both done over the formal protests of Canada) amount to a violation of the "act of state" doctrine. Such actions constitute "court adjudications involving the legality of acts of foreign states on their own soil that might embarrass the Executive Branch of our government in the conduct of our foreign relations."[10] *Alfred Dunhill of London, Inc.* v. *Cuba*, 425 U.S. 682, 697 (1976). It is clear from the record that Judge Felter has determined to "sit in judgment on the acts of the government of another [nation] done on its own territory." *Underhill* v. *Hernandez*, 168 U.S. 250, 252 (1897). And he is acting despite

> . . . the absence of consensus on the applicable international rules, the unavailability of standards from a treaty or other agreement, . . . the sensitivity of the issues to national concerns, and the power of the Executive alone to effect a fair remedy for all United States citizens who have been harmed . . . .

First National City Bank v. *Banco Nacional de Cuba*, 406 U.S. 759, 788 (1972) (Brennan, J., dissenting).

[10] The "act of state" doctrine reflects the strong sense of the judiciary that matters of international relations are best handled by the Executive Branch of the Federal Government, and the fear that judicial decisions may interfere with the conduct of foreign relations. *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964); *Alfred Dunhill of London, Inc.* v. *Cuba*, 425 U.S. 682 (1976).

3. The New Mexico Supreme Court's Denial Of a Writ of Prohibition Is Immediately Reviewable

Judge Felter has exceeded the jurisdiction of a State court by unlawfully intruding into domains reserved to the federal government, and by overriding and questioning the official acts of a foreign government on its own territory. Because such jurisdictional excesses are inherently harmful to foreign relations, appellate courts should not wait until litigation in the trial court is concluded before taking corrective action. This is particularly true when, as here, the foreign government has directly objected to the trial court's action. Thus, the New Mexico Supreme Court should have issued a writ of prohibition restraining Judge Felter's unlawful assertions of jurisdiction. Its denial of a writ of prohibition on January 11, 1978, is immediately reviewable in this Court under 28 U.S.C. § 1257(3). As this Court said in *Madruga* v. *Superior Court*, 346 U.S. 556, 557 n.1. (1954), "[t]he State Supreme Court's judgment finally disposing of the writ of prohibition is a final judgment reviewable here under 28 U.S.C. § 1257." The ruling in *Madruga* was recently reaffirmed and followed by this Court in *Fisher* v. *District Court*, 424 U.S. 382, 385 (1976), and is applicable here.

Nor is there any basis for deferring prompt review because of the concluding language of the State supreme court's order of February 1, 1978. In denying stays pending the filing and disposition of papers in this Court, the State supreme court ordered Judge Felter "to allow the parties sufficient time prior to the entry of any order of findings of facts based upon the order of November 16 [sic], 1977 . . . to present to this Court additional motions as may be appropriate." Although this language appeared to provide an opportunity for further review by the New Mexico Supreme Court prior to the entry of any judgment by Judge Felter (see App. N, p. 50a *infra*), the New Mexico Supreme Court closed that avenue on March 2, 1978. Judge Felter had issued a notice on February

16 (App. O, pp. 51a-52a *infra*) stating that he would enter his findings on or after March 1, but giving the parties only until February 28 to file motions in the New Mexico Supreme Court pursuant to the Supreme Court's Order of February 1, 1978. GAC thereupon filed a motion with the New Mexico Supreme Court requesting a stay of any entry of findings and a certification by Judge Felter of his proposed findings. The New Mexico Supreme Court heard the motion on March 1 and denied it summarily on March 2 (*see* Attachment IV to the Application for Stay accompanying this petition).[11]

In any event, in its order of February 1, 1978, the New Mexico Supreme Court did not question Judge Felter's ruling on the fundamental jurisdictional question raised in GAC's Petition for Writ of Prohibition, which the State supreme court had already turned down on January 11. That fundamental question, which has nothing whatever to do with the particular facts which Judge Felter may enter as a sanction against GAC, is whether, in the face of formal objections from the Canadian Government, Judge Felter has authority to require GAC to obtain the production of Canadian documents from GMCL although such disclosure by GMCL is a crime in Canada, or authority to adjudicate the legality of the international arrangement sponsored and enforced on its own soil by the Canadian Government.[12]

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[11] The denial of the motion by the New Mexico Supreme Court on March 2 occurred after the preparation of this petition. Also, thirty minutes after the State supreme Court's denial, Judge Felter entered a Sanctions Order and Default Judgment described in the Application for Stay accompanying this petition. As stated in the accompanying application for stay, the Sanctions Order and Default Judgment will be the subject of another petition for certiorari to be filed within fourteen days.

[12] Moreover, additional support for immediate review of Judge Felter's order is provided by the fact that his order may cause GAC to suffer collateral harm amounting to many millions of dollars in other pending judicial proceedings, a pending arbitration, and in future suits which may be brought because of Judge Felter's order. Such collateral harm could arise because other tribunals possibly

4. Judge Felter's Canadian Documents Order Deprives GAC of Due Process of Law

In his order of November 18, Judge Felter accomplished two things: He required GAC to obtain Canadian documents from GMCL for production in his court, and he imposed a drastic sanction for nonproduction. The sanction is that all facts allegedly provable from the documents "are found" against GAC, which "is precluded from offering evidence herein in opposition to such findings of fact." This sanction is being applied despite two good faith efforts by GAC to secure a waiver from the Canadian Government. Pursuant to this order, Judge Felter presently has under advisement extensive briefs addressing the precise findings of fact which he will enter. Under the order of November 18, the findings of fact will be adverse to GAC. In fact, as a practical matter, they may well dispose of the litigation adversely to GAC.

It is clear that Judge Felter's order of November 18 violates the Due Process Clause as interpreted by this Court in *Societe Internationale* v. *Rogers*, 357 U.S. 197 (1958), and is in conflict with the ruling of the Tenth Circuit in the Westinghouse litigation discussed above. *In re Westinghouse Electric Corp. Uranium Contracts Litigation*, 563 F.2d 992 (10th Cir. 1977). In *Societe*, a plaintiff made good faith efforts to produce certain documents, but ultimately was unable to produce them because production would have been a crime under Swiss law. The district court thereupon ordered that plaintiff's complaint be dismissed. This Court reversed the sanction, ruling that in light of the Due Process Clause, the sanction could not be imposed upon a party who had made

---

could follow Judge Felter's ruling of November 18, and the *res judicata* effect of such a ruling—even if reversed on appeal—is uncertain. *See Reed* v. *Allen*, 286 U.S. 191 (1932); *Huron Holding Corp.* v. *Lincoln Mine Operation Co.*, 312 U.S. 183 (1941); 1B *Moore's Federal Practice* ¶ 0.416[4] (1974). For these reasons, too, it is important that Judge Felter's jurisdictional excesses not go unreviewed until the conclusion of the trial in this Court.

efforts to satisfy a discovery order but was unable to do so because of the conduct of others or circumstances beyond its control. This Court said that "substantial constitutional questions are provoked" under the Due Process Clause by an order "striking . . . a complaint because of a plaintiff's inability, despite good faith efforts, to comply with a pretrial production order." 357 U.S. at 210. The Court further stated that "fear of a criminal prosecution constitutes a weighty excuse for nonproduction" and that dismissal should not be ordered where nonproduction is "due to inability, and not to willfulness, bad faith, or any fault" of the nonproducing party. 357 U.S. at 212.

As was true of the sanctioned party in *Societe*, GAC has made good faith efforts to comply with discovery orders of the trial court. And, as in *Societe*, GAC's inability to produce is due to reasons wholly outside its control—Canada has made disclosure or identification of the documents by GMCL a crime, and the Canadian Government will not waive the criminal regulations. (Indeed, there appears to be no authority under Canadian law to waive the regulations.)

The *Westinghouse* case, which was specifically called to Judge Felter's attention, was not even mentioned by him in his order of November 18. It, too, concerned an order for Canadian documents, in circumstances which were substantially identical to the present case. *Westinghouse* involved the same international marketing arrangement, the same kinds of documents, and the same Canadian laws and regulations as this case. Furthermore, just as Rio Algom Corporation had unsuccessfully tried to obtain a waiver from the Canadian Government, so here GAC has tried to obtain a waiver.

Because Rio Algom Corporation was unable to produce the Canadian documents, Judge Willis Ritter imposed a fine on it for contempt of court. The court of appeals

reversed, relying on the fact that Rio Algom had sought a waiver from the Canadian authorities (563 F.2d at 998-1000), pointing out that the sovereign interests of Canada were heavily involved in the matter (563 F.2d at 995, 988, 999), and concluding that the district court had erred in failing to give consideration to Canada's interests (563 F.2d at 999). The conflict with Judge Felter's ruling, which gives no heed to GAC's two requests for waiver and ignores Canada's interests, could not be more striking.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: March 3, 1978

APPENDICES

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APPENDIX A

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO

Wednesday, January 11, 1978

No. 11,777

STATE OF NEW MEXICO, EX REL.
GENERAL ATOMIC COMPANY,
Petitioner,

vs.

HON. EDWIN L. FELTER, District Judge,
First Judicial District, State of New Mexico,
Respondent.

ORIGINAL MANDAMUS AND PROHIBITION
PROCEEDING UNDER POWER OF
SUPERINTENDING CONTROL

This matter coming on for consideration by the Court upon petition for writ of mandamus and prohibition under power of superintending control, and the Court having considered said petition and being sufficiently advised in the premises;

NOW, THEREFORE, IT IS ORDERED that petition for writ of mandamus and prohibition under power of superintending control be and the same is hereby denied.

ATTEST: A TRUE COPY

/s/ [Illegible]
Clerk of the Supreme Court
of the State of New Mexico

APPENDIX B

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50827

UNITED NUCLEAR CORPORATION,
Plaintiff,
vs.
GENERAL ATOMIC COMPANY, ET AL.,
Defendants.

ORDER

This matter coming on regularly to be heard by the Court upon the motion of Plaintiff, United Nuclear Corporation "For Order Compelling Identification and Production of Documents and Finding All Facts Provable From Canadian Documents Against Gulf and GAC", and the responses to said motion filed by Defendant, General Atomic Company; the Court having considered said motion, responses, oral and written arguments of counsel, affidavits, the record proper and evidence heretofore admitted by the Court applicable to such motion, and being otherwise fully advised in the premises, Finds and Concludes:

1. Due process of law and the equal application and protection of law require that *each* party to this case fully comply with Rules 31 through 34 inclusive of the New Mexico Rules of Civil Procedure and produce for inspection and copying *all* documents included within the scope of such rules which are relevant or may lead to relevant evidence and which are not privileged under the laws of New Mexico.

2. Deference to the sovereignty and national interest of Canada or its provinces cannot be accomplished through sacrifice of the sovereignty of New Mexico and of due process of law and equal application and protection of law afforded by the laws of New Mexico. In this forum, the aforesaid laws of this forum which protect the fundamental public policy of this State must govern over the national interest or policy of a foreign country as legislated and conceived by that foreign country. No rule of comity would require a sovereign state of the United States to so abdicate the protection of fundamental rights under its general laws that are necessary to a fair trial in favor of special foreign laws that are not concerned with any aspect or requirement of fair trial.

3. No adequate remedy or protection in these premises exists except for the production of the documents which are the subject of the foregoing motion or the finding by this Court of all facts provable from such documents against the party failing to produce them in accordance with Rules 31 through 34, inclusive, and as authorized by Rule 37 of the New Mexico Rules of Civil Procedure. Said documents have not been produced for inspection and copying, and Defendant, General Atomic Company has failed to produce said documents, caused in part, by its own early and deliberate policy of housing such documents in Canada and outside the boundaries of the United States of America.

4. The Court's order herein dated October 11, 1977 required of Defendant, General Atomic Company that it "clearly and definitively" identify all documents housed in Canada, but said order did not specify a "summary of its contents" as a part of such identification. These provisions of the Court's order were not performed or complied with but rather they were sought to be avoided.

5. In response to the Court's order of October 11, 1977 Defendant, General Atomic Company identified certain

documents not housed in Canada by reference to computer number. Such method of identifying documents in this instance and in view of the time constraints imposed therein, may be considered by the Court to be a reasonable and substantial compliance with the Court's order as to those documents so identified, to the extent that such identification is accurate.

Now, Therefore, In Accordance With The Foregoing Findings and Conclusions, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant, General Atomic Company, forthwith shall identify, clearly and definitively, all documents housed in Canada which are the subject of said motion.

2. All facts provable from documents housed in Canada which are not produced and which are the subject of said motion are found against Defendant, General Atomic Company, and said defendant is precluded from offering evidence herein in opposition to such findings of fact; subject however, to the other provisions of this order.

3. On or before December 15, 1977, or at least 7 days before plaintiff rests its case in chief, whichever shall first occur, Plaintiff, United Nuclear Corporation shall file and serve proposed findings of fact on the factual issues to be determined against Defendant, General Atomic Company by reason of the non-production of the foresaid "cartel" documents which are the subject of Plaintiff's motion. Within fifteen (15) days after service of such proposed findings of fact, each defendant herein may file and serve responses to such proposed findings of fact. All parties may accompany such filings with memoranda of argument and authorities, if desired.

4. In making its final decision herein and at any other appropriate stage of the proceedings herein the Court will consider and give effect to appropriate findings of fact consistent with this order and consonant with the

evidence then admitted and before the Court, which is relevant to the issue.

5. The time limits specified in this order may be extended, shortened or modified for good cause shown.

/s/ Edwin L. Felter
EDWIN L. FELTER
District Judge

APPENDIX C

NOTE NO. FLP-178

The Department of External Affairs has the honour to refer to the Acting Secretary of State for External Affairs' Note No. FLP-177 of August 15 concerning investigations, hearings and actions concerned with international uranium marketing arrangements that are currently being undertaken by the executive, legislative and judicial branches of the United States Government and State Governments.

The Government of Canada understands that the Federal District Court in the Third Judicial District in Salt Lake City, Utah, has ordered Rio Algom Corporation, a U.S.A. subsidiary of a Canadian company, to produce documents which the Government understands were at one time in the possession of the Canadian parent but were never in the territory of the U.S.A. and are now at the request of the Government of Canada in the Government's possession. The Government further understands that the court has taken steps to penalize Rio Algom Corporation by imposing a fine of $10,000 a day for failure to comply with its order, notwithstanding the fact that in the absence of consent by the Canadian Ministry of Energy, Mines and Resources, the documents are prohibited by Canadian regulations from removal from Canada. The Minister has written to the Canadian company denying its request that the documents be released.

The Canadian Government is deeply concerned that an order has been issued by a U.S.A. court, the effect of which would be to compel the production of documents from Canada contrary to Canadian law, a result that would be inconsistent with international comity. The Department of External Affairs requests the Department of State to bring the Canadian Government position to the attention of the U.S.A. court where this order is now under appeal.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Ottawa
August 15, 1977

DEPARTMENT OF STATE
Washington, D.C.

[SEAL]

December 20, 1977

The Honorable Edwin L. Felter
P.O. Box 2268
Santa Fe, New Mexico 87501

Re: United Nuclear Corporation v. General Atomic Company, *et al.*, Santa Fe Docket No. 50827

Dear Judge Felter:

The Government of Canada, through the Canadian Embassy in Washington, D.C., has requested the Department of State to convey to the Court the views of the Government of Canada with respect to certain issues relating to the above-captioned litigation. Copies of the text of two diplomatic notes containing these views are attached.

The Department of State, in transmitting the views of the Canadian Government, takes no position with regard to any of the issues raised in either of the two notes. Transmittal of these documents should not be understood as having implications with respect to the foreign affairs of the United States.

Sincerely,

/s/ John R. Crook
JOHN R. CROOK
Assistant Legal Advisor
for European Affairs

Enclosures: As stated

Ottawa, August 15, 1977

NO. FLP-177

His Excellency
Thomas Ostrom Enders,
Ambassador of the United
States of America,
OTTAWA.

Excellency,

I have the honour to refer to investigations, hearings and actions concerned with international uranium marketing arrangements that are currently being undertaken by the executive, judicial and legislative branches of the United States Government and State Governments and in particular to investigations being conducted by a Department of Justice Grand Jury, the House of Representatives Sub-Committee on Oversight and Investigations and cases related to this matter being heard in courts in the United States including that in the U.S. District Court for the Western District of Pennsylvania in Pittsburg and that under appeal from the Federal District Court in the Third Judicial District in Salt Lake City.

I have the honour to inform you that the policy of the Canadian Government was to support and participate in international uranium marketing arrangements from 1972 to 1975 to ensure the survival of the Canadian uranium industry which was being damaged by the restrictive uranium trade practices of the United States. Canadian Ministers and officials were acting within their authority in this matter and acted in the way they did to protect Canadian national interests. The Canadian Government finds it objectionable that this Canadian Government policy should be questioned under United States law.

I have the further honour to inform you that the participation of all Canadian uranium producers in these uranium marketing arrangements was a matter of Canadian Government policy to ensure the survival of the industry and, accordingly, to protect the Canadian national interest. Canadian Government policy in this regard was implemented through the Atomic Energy Control Act and Regulations. These Regulations provide, *inter alia*, that no person shall produce, mine, prospect for, refine, use, sell, export, import or possess for any purpose natural uranium, except in accordance with a license issued by the Atomic Energy Control Board.

I have the honour to request that you communicate this information at your earliest convenience to the United States Government and in particular to the bodies referred to above which are currently considering matters related to the uranium marketing arrangements.

Accept, Excellency, the renewed assurances of my highest consideration.

/s/ B. Cullen
B. CULLEN

Acting Secretary of State
for External Affairs

Canadian Embassy [SEAL] Ambassade du Canada

No. 620

The Canadian Embassy presents its compliments to the Department of State and has the honour to refer to the Secretary of State for External Affairs Note No. PLP-177 of August 15 regarding investigations, hearings and actions concerned with international uranium marketing arrangements that are currently being undertaken by the executive, legislative and judicial branches of the United States Government and State Governments.

The Government of Canada understands that the District Court for the County of Santa Fe, New Mexico, has ordered General Atomic Company to identify and produce documents which are in the possession of Gulf Minerals Canada Limited, a related Canadian Company, in Canada. The Government further understands that the Court has taken steps to penalize General Atomic and that General Atomic will be precluded from offering evidence in opposition to such findings of fact, subject to other provisions of the order. The Court issued this order notwithstanding the fact that Canadian regulations prohibit identification or production of these documents except where such release or disclosure is required by or under a law of Canada, and the fact that the Canadian Minister of Energy, Mines and Resources has written to the counsel for General Atomic Company refusing a request to remove and identify the documents. The Supreme Court of Ontario has recently decided that the Minister of Energy, Mines and Resources cannot, in any event, exempt persons from the Canadian regulations.

The Canadian Government is deeply concerned that an order has been issued by a United States court, the affect of which would be to compel the identification and production of documents in Canada contrary to Canadian

law, a result that would be inconsistent with international comity. The Canadian Embassy requests the Department of State to bring the Canadian Government's position, including the views expressed in the Secretary of State for External Affairs Note No. PLP-177 of August 15, to the attention of the United States court in New Mexico.

The Canadian Embassy avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, December 9, 1977 [SEAL]

APPENDIX D

Energy, Mines and Resources Canada | Energie, Mines et Ressources Canada

INFORMATION EMR-OTTAWA K1A 0E4
NEWS RELEASE

14 October, 1977

PRESS RELEASE BY THE HONOURABLE ALASTAIR GILLESPIE

The Honourable A. W. Gillespie today said:

"Over the past several weeks, the government has been criticized for actions that it took from 1972-75 to protect the Canadian uranium industry from the consequences of U.S. actions. I want to respond to these criticisms today in order to set the record straight.

The government has indicated on a number of occasions that it viewed the establishment of an international marketing arrangement for uranium in 1972 to be in the national interest. It, therefore, authorized its crown corporations to participate in the arrangement and passed a regulation under the Atomic Energy Control Act requiring the Canadian uranium producers to comply with the pricing and quota provisions which had been agreed upon internationally. The government approved this arrangement in 1972, on the specific understanding that it would not apply to the markets of Canada, Australia, South Africa, France and the United States. It was necessary as a matter of public policy for the government to protect our producing industry from extinction and to do so by helping to stabilize world prices at levels above the cost of production. This policy was defensible in 1972 and it is no less defensible today. We were influenced in this decision by the following considerations:

1) The decision was a direct response to U.S. actions that effectively closed the U.S. market for uranium to Canadian producers. I have outlined the conditions of the uranium market and the nature of the U.S. actions in my statement of June 14, 1977 and in a paper of September 22, 1976. These are attached for reference. The Canadian industry had expanded vigorously through the 1950's, essentially to meet U.S. demands. New mining communities were formed and the American actions threatened the existence of these communities, the jobs of many Canadians, and the existence of the industry itself. The Canadian government protested to the government of the United States on a number of occasions, in order to make that government aware of the impact of its action on Canada and to indicate Canada's view that the U.S. action contravened its international responsibilities under the General Agreement on Tariffs and Trade.

   I am today releasing a number of diplomatic communications between our two governments that indicate the steps taken by Canada to make the U.S. aware of our views on this issue.

2) Through 1970 and 1971 the Canadian government took the lead in organizing discussions with governments of countries that bought uranium from us, apart from the United States, in order to seek ways of ensuring the survival of the Canadian uranium industry. These discussions were not successful.

3) The government has always controlled the export of uranium, under the Atomic Energy Control Act, and continues to do so. After the 1972 policy—requiring minimum prices and specifying volumes of sales to export markets—was agreed, the Minister of Energy, Mines and Resources made a public announcement that he was issuing a Direction to the

Atomic Energy Control Board in this regard. The government of the United States and other governments were also informed, in early 1972, that Canadian companies had met with other producers to discuss such matters as minimum prices and the allocation of markets. The notion that Canadian participation in the marketing arrangements was undertaken in secret is, quite simply, untrue.

I am releasing today, the seven general Directions dealing with prices and quotas that were issued between 1972 and 1975 by the Minister to the AECB. In considering these Directions, the following points are particularly relevant:

1) All the Directions make it explicit that the Canadian and U.S. markets were to be excluded from the agreed marketing arrangements. However, the government continued through this period, as it does now, to regulate and review the export of uranium to all countries to ensure that the terms and conditions of such exports were and are in the public interest.

2) The initial Direction of August 17, 1972 set a minimum price of $5.40 per lb. for uranium delivered in that year. At this time the price on international markets (excluding the U.S.) was estimated to be about $5.00-$5.50 per lb. The price in the U.S. market, which amounted to about 70% of the world market at the time, was about $6.00 per lb.

3) The last general price Direction, issued in March of 1974, established a minimum price of $8.20 per lb. for delivery in 1974, rising to $12.20 per lb. for delivery in 1978 (or, alternatively, $9.70 per lb. escalated from 1974 for deliveries to 1985). Early in 1974 it was becoming apparent that the uranium market was beginning to turn around and the Minister's Direction made reference to this trend.

4) By late 1974 it was clear that demand was exceeding supply and the Minister directed the AECB in January of 1975 to disregard the quota restrictions and to bear in mind that the pricing Directions were to be regarded as minimum conditions. In March of 1975, the Minister formally revoked his general pricing Directions to the Board.

5) With the exception of two months in early 1974 prices reported in the U.S. market were never less than the minimum agreed prices. Two charts are attached which indicate the relationship between the U.S. price and the minimum price from 1972-74, and the international selling price of uranium in relation to the last agreed price Direction from 1974 to 1977. It should be noted that the termination in March 1975 of the marketing arrangement—which was said to be artificially increasing the price—did nothing to slow the increase in uranium prices.

In short, the marketing arrangement authorized by the government was temporary. It was defensive in nature and directed at protecting the Canadian industry and Canadian communities against restrictive actions by the U.S.

It is against this background that I wish to deal with the questions of the legality of the arrangement and the Uranium Information Security Regulations.

The legality of the arrangement with regard to the Combines Investigation Act was a matter of concern to the government in 1972.

The government was advised that if the arrangement operated so as to limit the volume of exports from Canada or unduly lessen competition in the Canadian market, it could possibly violate the Combines Investigation Act.

Because it was the government's opinion that the arrangement was in the national interest, it passed a

Regulation in July 1972 under S.9 of the Atomic Energy Control Act authorizing the AECB, in considering export contracts for uranium, to ensure that prices and quantities as specified in Direction to the Board by the Minister of Energy, Mines and Resources, pursuant to S.7 of that Act, were followed. The effect of this was to provide an exemption from the Combines Investigation Act since the Board was effectively regulating the volume of exports pursuant to an Act of Parliament. The jurisprudence under that Act holds that, insofar as the activities of an industry are effectively regulated they cannot be in violation of the Combines Investigation Act. The Regulation did not operate so as to exempt the producers from any activity which might unduly lessen competition in the domestic market.

It was the government's policy that the domestic market be excluded from the international marketing arrangement. The government has no reason to believe that this arrangement violated the Combines Investigation Act. However, recent allegations that this arrangement did violate the Act have made it clear that the public interest requires this issue to be definitively resolved. It is for this reason, that my colleague, the Minister of Consumer and Corporate Affairs, has directed the Director of Investigation and Research to conduct a formal inquiry under the Combines Investigation Act.

The *Uranium Information Security Regulations* are a separate issue. In essence, they were designed to protect the sovereignty of Canada in the face of extraterritorial application of U.S. legal processes.

In 1975, Westinghouse Electric Corporation announced that it could not honour contractual commitments to provide uranium it had sold at fixed prices. During the period when the U.S. market was closed to foreign producers, Westinghouse not only continued to sell in that market but competed actively in other foreign markets,

selling significant amounts of uranium for future delivery at relatively low prices. In short, it sold uranium it did not have and when prices rose rapidly in 1975 Westinghouse stood to incur losses estimated at over $2 billion if it fulfilled its contractual obligations.

Westinghouse is now being sued by its customers and, in turn, is suing many producing companies including some that participated in the marketing arrangements, alleging that they breached United States anti-trust laws.

A Grand Jury was convened by the U.S. Justice Department to examine whether the international marketing arrangement contravened U.S. anti-trust law and, as a result, parents or subsidiaries of Canadian companies were served with subpoenas demanding that documents in Canada be produced before U.S. courts.

The government finds it objectionable that the actions of Canadian uranium producers, which were required by Canadian law and taken pursuant to Canadian policy, should be called into question by foreign courts.

The Regulations were passed because it became obvious, late in 1976, that the government would have to act to prevent documentation on the marketing arrangements from being released to U.S. courts. Failure to take such action would have placed the government in the untenable position of allowing evidence to be provided to a foreign court for use in the possible prosecution of Canadian nationals for acts that were in accordance with Canadian law and government policy.

The Regulations were drafted on an urgent basis, in response to imminent legal acts by U.S. courts. They have been criticized for unduly restricting the rights and privileges of many Canadians who were not involved in the marketing arrangements and for prohibiting full and frank discussion of the events of that time. The Prime Minister indicated in the House of Commons in early August that the Regulations would be reviewed.

In the action brought by 6 Opposition MPs in Toronto, the government's position was that the privilege of freedom of speech in Parliament was paramount and that the Regulation did not interfere with that privilege. It further was the government's position that the Regulation did not prevent a member of the public from consulting a solicitor if the true purpose of the consultation was to be advised as to his own legal rights and obligations. The government also informed the Court at that time that it was considering possible amendments to the Regulations.

The Regulations have been reviewed and, as a result, they are being amended, effective today, to substantially narrow their scope. Their application will be limited to information relating to the export from Canada or marketing for use outside Canada of uranium or its derivatives and to persons associated with uranium producers and the federal government. They will not preclude discussion by others of documents that are now in the public domain.

These limited restrictions continue to be necessary to ensure that Canadian sovereignty is adequately protected from the extraterritorial application of U.S. legal processes. Other countries, such as Australia, have enacted legislation designed to deal with threats of interference with their sovereignty by foreign legal processes and the Canadian government may at some point have to consider introducing such legislation. The government's preference, however, in situations where principles of extraterritoriality and sovereignty conflict, is to seek a negotiated solution through diplomatic means. Discussions directed at such a solution are taking place with the United States government and we are optimistic that an accommodation of interests can be found."

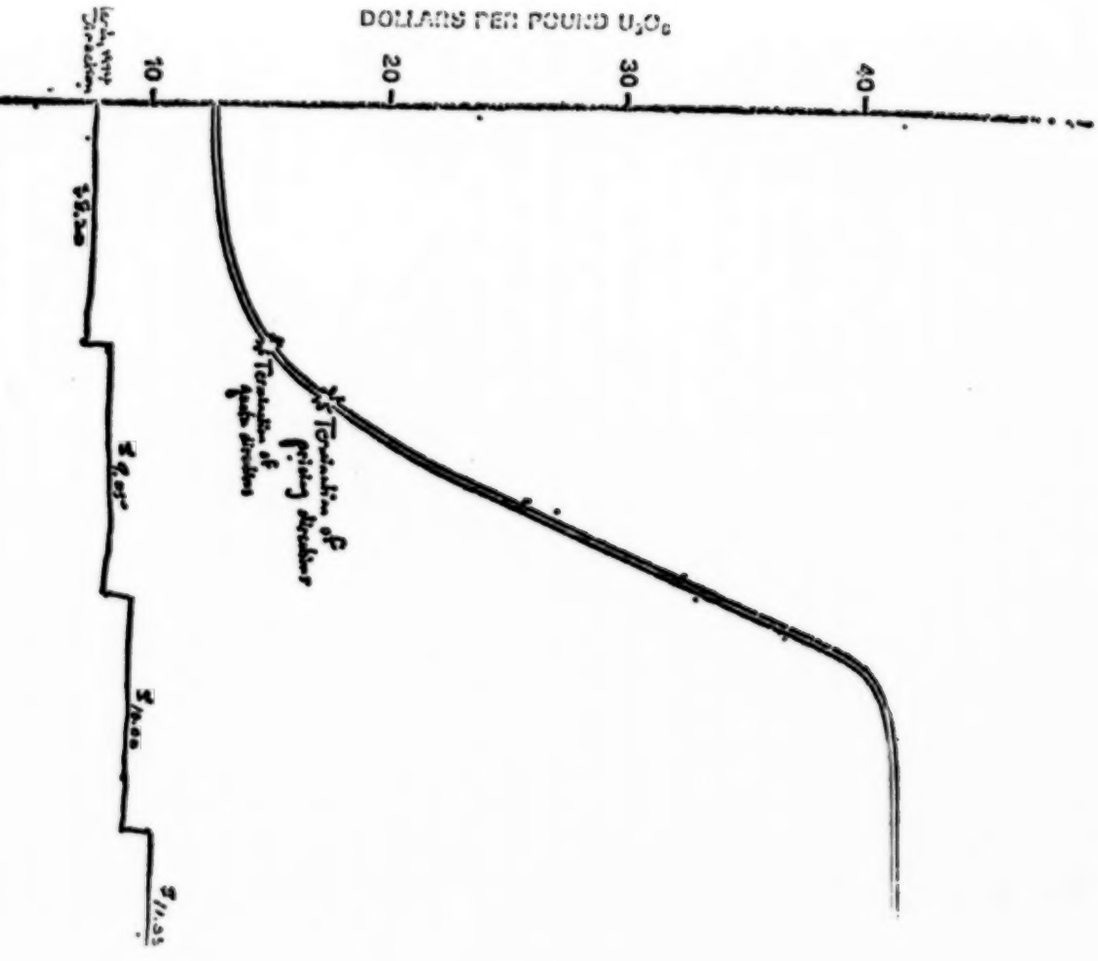

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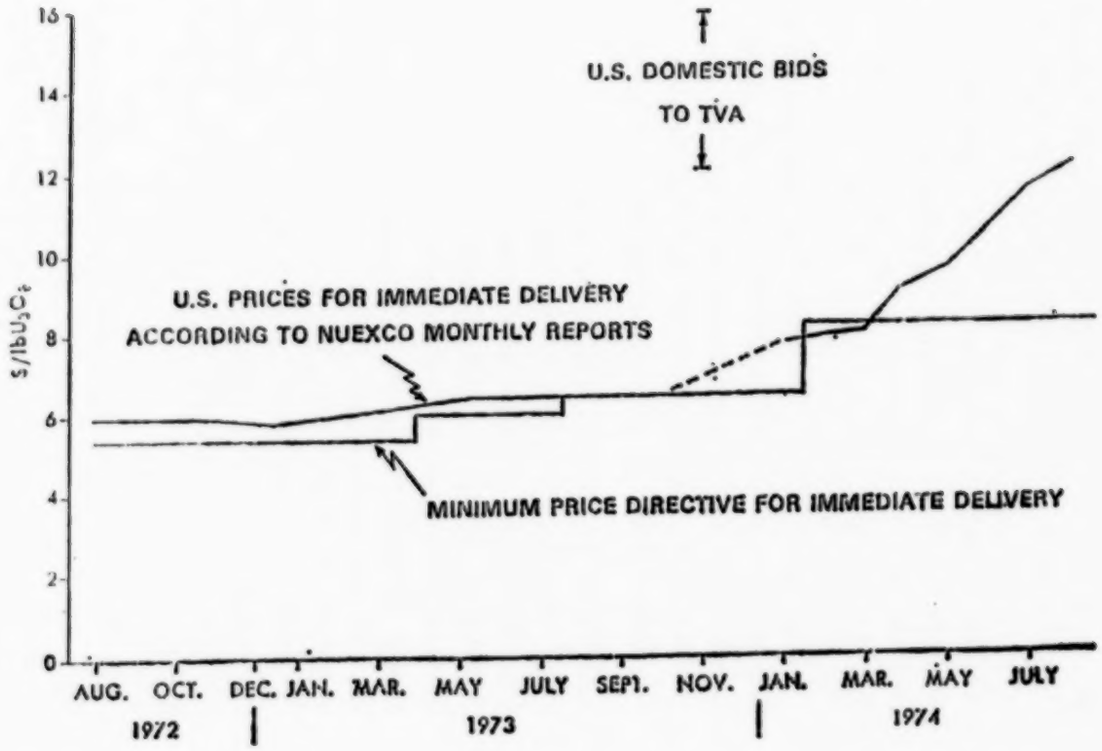
Fig. 2

COMPARISON OF PRICES WITHIN U.S. WITH
MINIMUM PRICE DIRECTIVES TO AECB



21a

STATEMENT BY ALASTAIR GILLESPIE MINISTER OF ENERGY, MINES AND RESOURCES

The federal government has approved a regulation under the Atomic Energy Control Act to prevent the removal from Canada of information relating to uranium marketing activities during the period 1972-1975.

The action was taken in the light of the sweeping demand for such information by U.S. subpoenas, which, while served upon officers of United States companies, call for the presentation of information in the possession of subsidiary or affiliate companies "wherever located".

During the early 1970's the Canadian government tried to elicit consuming nation support for the uranium industry and its dependent mining communities which were suffering from an oversupply and low price situation. The problems were compounded by United States policies which closed the large U.S. market to foreign uranium, and at the same time moved uranium from the U.S. government stockpile into the international market through conditions imposed on foreign users of U.S. uranium enrichment facilities. Concurrently, U.S. corporations were competing aggressively for sales outside of their protected domestic market.

Lacking support from consuming nations, and convinced that a viable nucleus of the producing industry was essential in the light of all projections of future demand, the Canadian government initiated discussions with producing nations which led ultimately to an informal marketing arrangement among non-U.S. producers.

Canadian producers acted with the approval and, in some cases, at the specific request of the federal government. The arrangement excluded the U.S. market. The government supported the initiative by directing the Atomic Energy Control Board to reject any export of

uranium at prices below those called for by the marketing arrangements. The minimum prices adopted were almost without exception below those reported within the protected U.S. market at that time and ranged from $5.40 to $8.20 per pound U_3O_8 for immediate delivery in 1972 and 1974 respectively.

The dramatic demand for uranium following the oil crisis of late 1973 propelled prices well above any agreed minimum price structure. Demand suddenly exceeded supply. Because the marketing arrangement had been overtaken by market forces, the Canadian government withdrew all minimum price directives in early 1975.

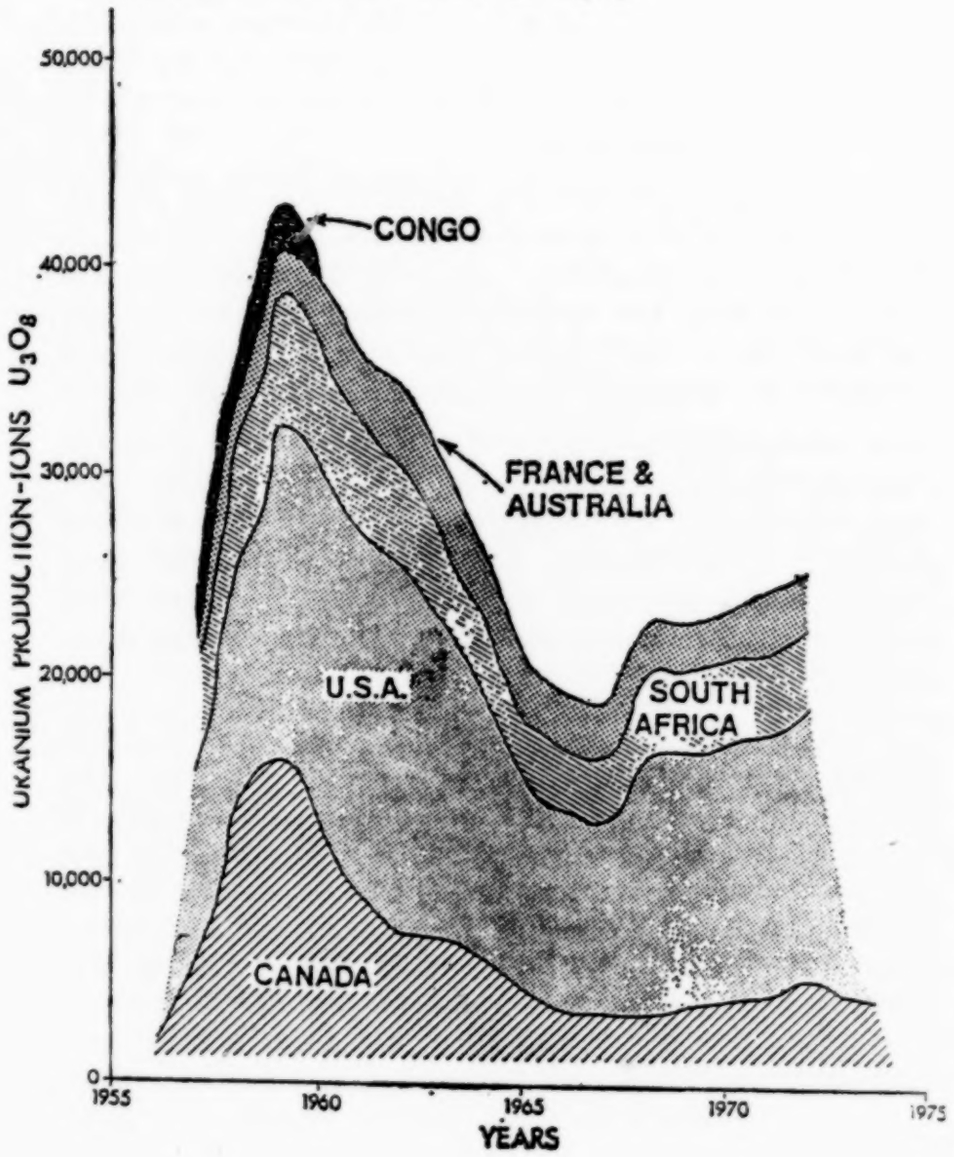
Given this background, it is not surprising that the Canadian material called for by the U.S. subpoenas contains information in respect of activities approved and supported by the Canadian government. Clearly this must be regarded as an issue of sovereignty. The government has therefore moved to prevent the removal of such documents from Canada.

The Canadian government's policy on marketing has always supported an effective consumer-producer dialogue. Although government to government initiatives have so far failed to develop such a mechanism for this essential commodity, it is hoped that the efforts of the producers to achieve a better consumer/producer understanding through the Uranium Institute of London will prove successful.

22 September, 1976

Figure 1

HISTORICAL PRODUCTION OF U_3O_8



STATEMENT BY THE MINISTER OF ENERGY, MINES AND RESOURCES

August 23, 1972

The Honourable Donald S. Macdonald, Minister of Energy, Mines and Resources, issued today the following statement regarding the Government's policy with respect to future sales of uranium to other countries:

"On June 19, 1969, the Government announced a uranium policy providing for the examination of all contracts covering the export of uranium and thorium to ensure that the terms and conditions of such contracts would be in the national interest. The examination is carried out by the Atomic Energy Control Board in consultation with the Department of Industry, Trade and Commerce. Approval of such contracts and issuance of the necessary export permits only take place when all aspects and implications have been found to be in the national interest. A copy of the June 19, 1969, policy statement is attached.

In order to stabilize the current uranium marketing situation and to promote the development of the Canadian uranium industry, I have today issued a Direction to the Atomic Energy Control Board covering such aspects as minimum selling prices and volumes of sales to export markets. Because of the nature of uranium export contracts it would not be in the public interest to disclose further contract details at this time."

APPENDIX E

Registration
SOR/76-644 23 September, 1976

ATOMIC ENERGY CONTROL ACT

Uranium Information Security Regulations

P.C. 1976-2368 21 September, 1976

His Excellency the Governor General in Council, on the recommendation of the Minister of Energy, Mines and Resources, pursuant to section 9 of the Atomic Energy Control Act, is pleased hereby to approve the annexed Regulations respecting the security of uranium information made by the Atomic Energy Control Board.

REGULATIONS RESPECTING THE SECURITY OF URANIUM INFORMATION

Short Title

1. These Regulations may be cited as the *Uranium Information Security Regulations.*

Security of Information

2. No person who has in his possession or under his control any note, document or other written or printed material in any way related to conversations, discussions or meetings that took place between January 1, 1972 and December 31, 1975 involving that person or any other person or any government, crown corporation, agency or other organization in respect of the production, import, export, transportation, refining, possession, ownership, use or sale of uranium or its derivatives or compounds, shall

(*a*) release any such note, document or material, or disclose or communicate the contents thereof to any person, government, crown corporation, agency or other organization unless

(i) he is required to do so by or under a law of Canada, or

(ii) he does so with the consent of the Minister of Energy, Mines and Resources; or

(*b*) fail to guard against or take reasonable care to prevent the unauthorized release of any such note, document or material or the disclosure or communication of the contents thereof.

APPENDIX F

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50827

UNITED NUCLEAR CORPORATION,
Plaintiff,

vs.

GENERAL ATOMIC COMPANY, ET AL,
Defendants.

ORDER

This matter coming on to be heard by the Court upon the motion filed by the plaintiff, United Nuclear Corporation, and joined in by the defendant, Indiana and Michigan Electric Company, for sanctions and to compel answers to plaintiff's second set of interrogatories and for the production of documents; the Court having read the motion, response thereto, attachments and exhibits, supporting memoranda of the parties, having heard arguments of counsel and being otherwise advised in the premises makes the following findings concerning answer to interrogatories and production of documents, which are the subject matter of plaintiff's aforesaid motion, joined in by the defendant, Indiana and Michigan Electric Company, to-wit:

1. *Answer to Interrogatory No. 2*—The answer to this interrogatory, to the greater extent, evades the question rather than answering it. The question, in addition to calling for a direct answer setting forth definite and certain detailed factual information, also calls for a binding committment of the party deposed to the same factual information, quantitatively and qualitatively. The interrogatory calls for a separate and full answer in writing and under oath, which office cannot be filled by oblique references to depositions or other documents, the information from which may be subject to wide differences of opinion and interpretation. Such referenced information from other documents, in more instances than not is vague, indefinite, uncertain, incomplete, elusive and non-responsive and fails to commit to any position, posture or specific factual position.

It matters not that the deposing party may have the information called for by the interrogatory in its possession or that such information may be equally accessible to such deposing party. The deposing party, in addition to the discovery afforded by written interrogatories, is entitled to obtain from the deponent party, a firm committment to a set of facts, posture or position on the subject matter of the interrogatory. Defendant, General Atomic Company, has not answered Interrogatory No. 2 in the manner required by Rule 33 of the Rules of Civil Procedure as that rule has been given meaning and effect.

2. *Answers to Interrogatories Nos. 4, 9, 11, 12, 13, 15, 16, 17, 18, 19, 27, 5, 46, 57, 71 and 75*—answer to each of these interrogatories is defective, incomplete, inadequate and unacceptable for all or most of the reasons stated with reference to the answer to Interrogatory No. 2, supra.

3. *Answers to Interrogatories Nos. 30, 32 and, in part No. 5*—These Interrogatories call for certain and direct identification of documents or portions thereof, and the

answers thereto appear to be incomplete and indefinite as found in succeeding paragraphs of this order.

4. Most of each and all of the entire second set of interrogatories propounded by plaintiff call for specific identification of documents which are tied to the answer to the portions of the interrogatory. This portion of each of such interrogatories either has been ignored in the answer or answered in an incomplete or unsatisfactory manner. Where the interrogatory calls for identification of documents such identification should be made "separately and fully in writing under oath" as contemplated by Rule 33, and not by way of oblique reference to other documents or by deposition bibilography.

5. Defendant, General Atomic Company, may not have produced for inspection and copying, some of the ninety-one documents which Judge Snyder, in Cause No. 6728, on August 10, 1977 on the docket of the U.S. District Court for the Western District of Pennsylvania, and this Court in the case at bar, both have ruled are not subject to a valid claim of attorney-client privilege. Such production for inspection and copying should be accomplished forthwith. Moreover, in this and any other instance where a document ruled by this Court to be subject to claim of attorney-client privilege, has become a public record; then, as to such document, the attorney-client privilege is lost. Any documents, which by action of Judge Snyder in said Cause No. 6728 have now become public documents, are not now subject to this Court's finding that they or any of them are privileged.

This Court's finding of privilege was made without knowlede of the rulings of Judge Snyder upon the status of such documents as privileged, and upon the hypothesis that none thereof was public information. A document loses its attorney-client privilege when it becomes public information, with or without a waiver thereof by the

client. No lawful or valid purpose can be served by "closing the barn door after the horse is already out of the barn."

Irrespective of any prior rulings by this Court that any document is attorney-client privileged, if the document is now a public record, that fact per se voids this Court's finding of privilege, and documents in this category should be produced for inspection and copying.

6. To the extent that there has not yet been produced for inspection and copying, "cartel" and related documents which are available both in the United States and Canada, Defendant, GAC, in good faith, without evasion or reservation should produce for inspection and copying, all of such documents not now subject to any valid claim of privilege. This the defendant, GAC, has not done. The Court finds that documents of this category, either are relevant or may lead to relevant information.

7. Defendant, General Atomic Company, has not made a good faith effort to produce for inspection and copying, those "cartel" and related documents, reposing in Canada, and presumably within the possession of a wholly owned subsidiary, or a wholly owned subsidiary of a wholly owned subsidiary, of one of its constituent partners. Defendant, General Atomic Company is bound by law to take affirmative action and to exert all lawful effort reasonable and possible to bring about the production of those documents and without evasion or deception. In every event no justification has been advanced for failure to identify such documents, there being no assertion that such identification would in any manner violate Canadian law. A good faith effort to produce would prohibit the defendant, GAC, from using the Uranium Information Security Regulations of Canada or the Business Records Protection Act of Ontario, Canada as a dispensation from good faith effort to produce. Rather, the deponent acting in good faith, should seek diligently dispensation from

those Canadian laws so that it could lawfully produce documents to which such laws may pertain.

8. *Interrogatory No. 49*—This interrogatory calls for a "yes" or "no" answer, and for additional response only if answered in the affirmative. It was answered "no", and that answer would appear to be a complete and responsive answer.

Now, therefore, in accordance with the Court's findings,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant, General Atomic Company, on or before October 20, 1977 shall make new or additional answers to the interrogatories herein referred to and as required by the Court's findings hereby, without evasion, with full, direct, complete and good faith answers which bind the party deponant to specific facts, posture or position with reference to the factual information called for by the interrogatory. Such answers may not be vague, indefinite or by reference to any other document of an undefined or equivocal meaning, stance or interpretation, but must be separate full and complete answers in writing and under oath as contemplated by Rule 33 of the Rules of Civil Procedure. Additionally, the answers to the interrogatories herein specified and to any other of the plaintiff's second set of interrogatories, wherever requested or called for, new or amended answers should separately, clearly and definitively identify all documents, where such identification is requested, whether such documents be housed only in Canada, only in the United States or in both countries or elsewhere.

2. Insofar as it is lawful so to do, defendant, General Atomic Company, should produce for copying and inspection, on or before October 20, 1977 all documents, not now privileged hereinabove mentioned, including but not

limited to "cartel" and related documents, wheresoever situate.

3. To the extent that it might be a violation of Canadian law to produce here for inspection and copying documents housed in Canada and not also in the United States, defendant, General Atomic Company, should make an immediate diligent and good faith effort to obtain a lawful waiver of or dispensation from such Canadian prohibitions and to the extent thereafter lawful at the earliest possible date, actually produce for inspection and copying of such documents.

4. Any failure to abide by the terms of this Order in good faith or any failure by any party to this action to have submitted or to submit to lawful discovery fully and in good faith, when shown to the satisfaction of the Court to exist at a hearing on the issue set by the Court, or at the trial of the case on its merits, may subject the offending party or parties to such sanctions and inferences by law allowed and warranted. Further, where there may be evidence of record in support thereof, any aggrieved party, along with requested findings of fact and conclusions of law made at the conclusion of trial, may also make requested inferences of fact based upon such evidence.

/s/ Edwin L. Felter
EDWIN L. FELTER
District Judge

APPENDIX G

HOWREY & SIMON
Washington, D.C. 20006

October 13, 1977

The Honorable Alastair W. Gillespie
Minister of the Department of
Energy, Mines & Resources
Ottawa, Ontario
K1A OE4

Re: Request For Consent Under The Canadian Uranium Information Security Regulations

Dear Mr. Minister:

General Atomic Company, a partnership consisting of Gulf Oil Corporation and Scallop Nuclear, Inc., is a party defendant in an action pending in the District Court for the County of Santa Fe, State of New Mexico, entitled *United Nuclear Corporation* v. *General Atomic Company, et al.* (No. 50827). The trial of this action is scheduled to commence on October 31, 1977.

In this action, General Atomic Company has been served with interrogatories and requests for production of documents which call for the production, among other things, of documents relating to the foreign uranium marketing arrangement in the possession of Gulf Minerals Canada Limited, Toronto, Ontario, a subsidiary of Gulf Oil Corporation.

In pleadings filed with the Court as well as at a hearing upon plaintiff's motion to compel further answers to interrogatories and production of documents, the Court was advised of the provisions of the Canadian Uranium Information Security Regulations which, as we understand, prohibit the release of documents in the possession of Gulf Minerals Canada Limited in any way related to conversations, discussions or meetings involving the production, use or sale of uranium between January 1, 1972 and December 31, 1975 unless required to do so by or under a law of Canada or with your consent. Thereafter, the Court entered an order (copy of which is enclosed herewith) directing General Atomic Company to make "an immediate, diligent and good faith effort to obtain a lawful waiver of or dispensation from such Canadian prohibitions. . . ." The operative language (which we have underscored) is set forth in paragraph 3 (at page 5) of the Court's order.

In accordance with the Court's directive, we respectfully request on behalf of General Atomic Company, pursuant to Section 2(a)(ii) of the Uranium Information Security Regulations, that you consent to the release of those documents relating to the foreign uranium marketing arrangement in the possession of Gulf Minerals Canada Limited which are responsive to the aforesaid discovery requests and to permit the same to be copied and produced to plaintiff United Nuclear Corporation in the above-captioned litigation.

The Court's order in paragraph 2 thereof also directs General Atomic Company to identify all responsive documents, where such identification is requested, whether such documents are located in Canada or elsewhere. Pursuant to this directive, we further request that you advise us whether Gulf Minerals Canada Limited would be permitted under the Uranium Information Security Regulations to provide General Atomic Company with an identification of responsive documents in order that it may submit such identification to United Nuclear Corporation in this litigation. Where the document itself has not been previously produced to United Nuclear Corporation, the required identification would include:

(a) A description of the document by its title, date, originator(s) and recipient(s) and all persons who wrote, signed, initialed, dictated or otherwise participated in creating the same;

(b) Summary of contents; and

(c) The identity and address of the current custodian.

The Court has directed General Atomic Company to produce and identify all responsive documents on or before October 20, 1977. In view of this deadline, we would appreciate receiving at your earliest convenience your decision with respect to this request for the release of these materials and this information so that we can immediately communicate with the Court in regard to this matter. To expedite this request, we are telecopying to you a copy of this letter as well as mailing this letter to you by air mail, special delivery.

If you should require any additional information in order to act on this request, please advise us directly and we will respond forthwith.

Yours respectfully,

/s/ John Bodner, Jr.
JOHN BODNER, JR.
STEPHEN A. NYE
HOWREY & SIMON
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 783-0800

Attorneys for General Atomic Company

APPENDIX H

Ottawa, Ontario
K1A OE4

19 October 1977

Mr. John Bodner, Jr.
Barrister and Soliciter
c/o Howrey and Simon
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Bodner:

United Nuclear Company v. *General Atomic Company, et al.* (No. 50827);
Uranium Information Security Regulations

In your letter of October 13, 1977, you requested on behalf of General Atomic Company, that I give my consent under section 2(a)(ii) of the Uranium Information Security Regulations, SOR 76-644, to the production of documents relating to the uranium marketing arrangement in response to an Order of the District Court for the County of Santa Fe in the State of New Mexico. The documents in question are now in the possession of Gulf Minerals Canada Limited in Canada.

As you may know, the Regulations have recently been changed, although, the effect of the revised Regulations, a copy of which is enclosed, is the same insofar as the documents mentioned above are concerned.

As the production of the documents referred to above would be contrary to the policy of the Government of Canada in this matter, I hereby refuse your request. In respect of the policy of the Government of Canada, I enclose a copy of a statement I made on the subject on October 14, 1977.

In your letter you ask whether compliance with paragraph 1 of the Order of the Court insofar as it provides for the identification of documents located in Canada, would contravene the Uranium Information Security Regulations. I am advised that compliance with the Court's order by Gulf Minerals Canada Limited in the manner described in your letter, would be a violation of the Regulations.

Yours sincerely,

/s/ Alastair Gillespie
ALASTAIR GILLESPIE

APPENDIX I

HOWREY & SIMON
Washington, D.C. 20006

November 8, 1977

The Honorable Alastair W. Gillespie
Minister of the Department of
Energy, Mines & Resources
Ottawa, Ontario KIA OE4

Re: Amended Request for Consent under the Canadian Uranium Information Security Regulations

Dear Mr. Minister:

In a letter dated October 13, 1977, and in accordance with a direction of the District Court for the County of Santa Fe, State of New Mexico, we requested on behalf of General Atomic Company that you consent to the release of those documents relating to the foreign uranium marketing arrangement in the possession of Gulf Minerals Canada Limited which were responsive to certain interrogatories propounded by plaintiff in *United Nuclear Corporation* v. *General Atomic Company*. We also requested that you advise us whether Gulf Minerals Canada Limited would be permitted to provide General Atomic Company with an identification of responsive documents, including a summary of the contents of each, so that it could submit such identification to plaintiff United Nuclear Corporation. In a letter dated October 19, 1977, you advised us that the release and the identification of documents in the manner requested were prohibited by the Uranium Information Security Regulations, SOR-76-644. Our October 13 request and your subsequent denial are attached hereto.

This amended request pertains to the identification, but not the release, of responsive Canadian documents. Our initial request asked for identification of documents as defined by plaintiff in its interrogatories, including a "summary of contents" of each document. After being informed of your denial, plaintiff filed a motion with the Court seeking an order requiring General Atomic Company to identify documents without a "summary of contents." Plaintiff argues to the Court that our October 13 request to you intentionally included a request for a "summary of contents" in order to prompt a denial of our request.

Accordingly, to assure that the Court will accurately understand the decision of the Department of Energy, Mines and Resources, we request that you consent under the Uranium Information Security Regulation for Gulf Minerals Canada Limited to provide General Atomic Company with the (a) date, (b) author, (c) addressee, (d) recipients, and (e) subject matter, without summary of contents, of each of the documents in question.

There are enclosed for your information Plaintiff's Motion for Order Compelling Identification and Production of Documents and Finding all Facts Provable from Canadian Documents Against Gulf and GAC, together with supporting memorandum filed on November 4, 1977.

We would appreciate receiving a reply to this letter at your earliest convenience.

Respectfully submitted,

/s/ John Bodner, Jr.
JOHN BODNER, JR.
STEPHEN A. NYE
Attorneys for General
Atomic Company

ak
Attachments

APPENDIX J

Ottawa, Ontario
K1A OE4

Dec. 6, 1977

Mr. John Bodner, Jr.
Barrister and Solicitor
c/o Howrey and Simon
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Bodner:

United Nuclear Company v. *General Atomic Company, et al* (No. 50827);
Uranium Information Security Regulations

In your letter of November 8, 1977, you requested that I consent under section 2(a)(ii) of the Uranium Information Security Regulations, to the identification, by Gulf Minerals Canada Limited to General Atomic Company, of documents relating to the uranium marketing arrangement now in the possession of Gulf Minerals Canada Limited in Canada.

I enclose a copy of the decision of His Honour Mr. Justice Evans Chief Justice of the High Court of Ontario, in *Joe Clark et al* v. *Attorney-General of Canada.* As you will note in reading the above decision, His Honour Mr. Justice Evans concluded that section 2(a)(ii) of the Regulations was *ultra vires* the Atomic Energy Control Board and the Governor in Council under section 9 of the *Atomic Energy Control Act.* As a result of that decision, I am not able to consider your request.

Your sincerely,

/s/ Alastair Gillespie
ALASTAIR GILLESPIE

Encls.

APPENDIX K

[Emblem]

Energy, Mines and Resources Canada
Minister

Energie, Mines et Resources Canada
Ministre

Ottawa, Ontario
K1A OE4

Mr. R. N. Taylor
President
Gulf Minerals Canada Limited
Suite 1400, 110 Yonge Street
Toronto, Ontario
M5C 1T4

Dear Mr. Taylor:

GENERAL ATOMIC COMPANY:
URANIUM INFORMATION SECURITY REGULATIONS

I have recently learned of a decision of the District Court for the County of Santa Fe in the State of New Mexico, which I regard with considerable concern. As I understand the situation, General Atomic Company a U.S. company, is being ordered to produce and identify clearly and definitively documents that are in Canada in the possession of Gulf Minerals Canada Limited, notwithstanding that such production or identification is prohibited by the provisions of the Uranium Information Security Regulations. In the event that General Atomic Company does not comply with the order, there are as I understand the Order of the Court, a number of consequences with respect to findings of fact that would be made against General Atomic Company, which would follow.

As you may know, on October 13, 1977, I received a request from Counsel for General Atomic Company that

I give my consent pursuant to subsection 2(a)(ii) of the Regulations, now subsection 3(a)(ii) in the revised Regulations, to the release of material in the possession of Gulf Minerals Canada Limited. In a letter dated October 19, 1977, I refused that request on the basis that to give my consent would be contrary to the policy of the Government of Canada in the matter.

Subsequently, His Honour Mr. Justice Evans, Chief Justice of the High Court of Ontario, in his judgment in *Joe Clark et al* v. *Attorney General of Canada*, ruled that subsection 2(a)(ii) of the Regulations was "ultra vires" the Atomic Energy Control Board and that that subsection must be struck out of the Regulations.

As a consequence of that ruling, I do not have any authority to consent to the release of material falling within the provisions of the Regulations. Thus, the only exception to the prohibition set out in the Regulations is where the release of such material or the disclosure or communication of the contents thereof, is required by or under a law of Canada.

I am sure that you are aware that the Government of Canada is very concerned about attempts by courts in the United States to extend their jurisdiction into Canada. In view of the decision of the District Court in New Mexico, I take this opportunity to point out to you that the provisions of the Regulations effectively prohibit Gulf Minerals Canada Limited from assisting General Atomic Company in complying with the Order of the District Court in New Mexico, by producing, or identifying, documents coming within the provisions of the Regulations.

Yours sincerely,

/s/ Alastair Gillespie
ALASTAIR GILLEIPIE

APPENDIX L

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50827

UNITED NUCLEAR CORPORATION,
Plaintiff,

vs.

GENERAL ATOMIC COMPANY, *et al.*,
Defendants.

ORDER

This matter coming on for consideration by the Court upon the oral motion of defendant, General Atomic Company, made in open court to vacate and set aside the Court's order of November 18, 1977, with respect to the identification of certain documents located in Canada and the entry of adverse finding of facts against, and the preclusion of evidence by defendant, General Atomic Company; the Court having considered said motion, supporting affidavits and documents and the responses of the other parties herein and the memoranda of arguments and authorities filed by the various parties hereto, and being fully advised in the premises, Finds:

1. The aforesaid order of this Court made and entered herein on November 18, 1977 only affords unto the plaintiff herein the legitimate right to discovery on an equal and the same basis and to the same extent as those rights have been secured herein unto defendant, General Atomic Company, and all other parties hereto.

2. In the entry of the aforesaid order of November 18, 1977, only the law of New Mexico was followed, without anything in said order requiring anything of any foreign sovereign or of any person of any act in violation of any laws of a foreign sovereign.

3. Alternatively, should identification of the aforesaid documents housed in Canada, *at this time* be deemed to constitute a violation of Canadian law, which premise has not been shown to the satisfaction of this Court, still the order of November 18, 1977 must stand as the predicate to appropriate relief under Rule 37 of the Rules of Civil Procedure and in keeping with the Court's prior rulings herein.

4. Due process of law demands that the disparity between the parties hereto in their rights to discovery be eliminated, and identification of the documents in question is one of the rights of discovery to be secured as provided by law.

To meet the dilemma of disparity in the right of discovery thus presented, by (1) granting the motion of defendant, General Atomic Company to vacate and set aside this Court's order of November 18, 1977, or (2) to order the identification of such documents, expressly by violating Canadian law, would amount to a convolution of all principles of due process of law as well as disregarding public policy against commission of crime, finding support only in sophistry.

Due process of law, in this dilemma, finds its true answer and solution in identifying the documents in question without violating Canadian law, and, alternatively, if that cannot be accomplished, through appro-

priate relief under Rule 37 of the Rules of Civil Procedure.

IT IS THEREFORE ORDERED that the aforesaid motion of the defendant, General Atomic Company, be and it hereby is denied.

/s/ Edwin L. Felter
District Judge

APPENDIX M

IN THE SUPREME COURT
OF THE STATE OF NEW MEXICO
SANTA FE COUNTY

Wednesday, February 1, 1978

No. 11,775

UNITED NUCLEAR CORPORATION,
Plaintiff-Appellee,
vs.
GENERAL ATOMIC COMPANY, a partnership composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,
Defendant-Appellant,

INDIANA AND MICHIGAN ELECTRIC COMPANY, and
THE DETROIT EDISON CO.,
Defendants-Appellees.

No. 11,777

STATE OF NEW MEXICO, EX REL.
GENERAL ATOMIC COMPANY,
Petitioner,
vs.
HON. EDWIN L. FELTER,
Respondent.

ORIGINAL MANDAMUS AND PROHIBITION UNDER POWER OF SUPERINTENDING CONTROL

This matter coming on for consideration by the Court upon Motions of Petitioner and Appellant for Stay of Proceedings, and the Court having considered said motions and being sufficiently advised in the premises;

NOW, THEREFORE, IT IS ORDERED that the motions to stay the trial be and the same are hereby denied.

IT IS FURTHER ORDERED that the trial court be and the same is hereby directed to allow the parties sufficient time prior to the entry of any order or findings of facts based upon its order of November 16, 1977 entered in Cause No. 50827 on the Civil Docket, Santa Fe County District Court, to present to this Court additional motions as may be appropriate.

ATTEST: A TRUE COPY

/s/ Rose Marie Alderete
Clerk of the Supreme Court
of the State of New Mexico

APPENDIX N

IN THE SUPREME COURT STATE OF NEW MEXICO

No. 11775

UNITED NUCLEAR CORPORATION,
Plaintiff-Appellee,

vs.

GENERAL ATOMIC COMPANY, a Partnership Composed of Gulf Oil Corporation and Scallop Nuclear, Inc.,
Defendant-Appellant.

No. 11777

STATE OF NEW MEXICO, *ex rel.*
GENERAL ATOMIC COMPANY,
Petitioner,

vs.

HONORABLE EDWIN L. FELTER, District Judge, First Judicial District, State of New Mexico,
Respondent.

Wednesday, February 1, 1978

JUSTICE EASLEY: Mr. Montgomery, I'm wondering, wouldn't it be a better remedy for everyone concerned, if we do anything on this, to ask the Judge not to enter his findings that he makes until you've had time enough to come up here and [18] let us know what he's done, rather than speculate what he would do?

MR. MONTGOMERY: The problem there, your Honor, is I don't know whether we could come to the Court under the ordinary appeal processes until after conclusion of the trial and on appeal from the final judgment.

JUSTICE EASLEY: Of course, what I'm concerned about is that you're here now and you were here before. You don't know what Judge Felter is going to do in his findings. Why not come here after he has determined what he is going to have in the findings and give us a chance to see what he has decided to do?

MR. MONTGOMERY: That is a dilemma, your Honor, that the parties are faced with, and I admit it is a dilemma that we face because of the ambiguity which Justice Payne speaks of as talking out of both sides of one's mouth. The reason is because once the findings are entered, everyone in the world is told there was this conspiracy, that the Judge has found this, and General Atomic Company participated in it. It is now available for use in collateral estoppel. We can contest it, but attempts will be made to use it. It will bring about freely adverse publicity, which would harm the defendant in the conduct of all of its business relationships.

JUSTICE EASLEY: Have you talked to Judge Felter about [19] delaying the entry of his findings until you've had time to examine them, to come here with them?

APPENDIX O

IN THE DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

No. 50827

UNITED NUCLEAR CORPORATION,
Plaintiff,

vs.

GENERAL ATOMIC COMPANY, *et al.*,
Defendants.

NOTICE

To Each of the Parties to the Above-Entitled and Numbered Case, GREETINGS:

Pursuant to the mandate of the New Mexico Supreme Court in Cause No. 11,775 on its docket, entered on February 1, 1978, you and each of you are hereby notified that all motions relating to cartel documents, then pending and awaiting decision by the Court, will be acted upon by the Court on or after March 1, 1978. On or after March 1, 1978, the Court, in the exercise of its discretion and judgment, will enter such orders, findings, sanctions or judgments, or granting or denial or deferment of such motions, as to the Court then appears to be just and lawful.

Before any such action is or shall be taken by the Court in reference to such motions pending before it, and in keeping with the aforesaid mandate of the New Mexico Supreme Court, all parties to this case are allowed time until and including February 28, 1978 within which to file in the New Mexico Supreme Court, any additional motions they may deem proper.

Any action to be taken by this Court as herein mentioned, will not be taken under any procedure or procedures of secrecy, but will be taken in open court in accordance with constitutional and due process of law requirements of open and public trials.

A copy of this Notice shall be served in open court upon counsel for each of the parties to this case this 16th day of February, 1978.

/s/ Edwin L. Felter
District Judge